

ORDINANCE NUMBER O- **20100** (NEW SERIES)DATE OF FINAL PASSAGE **OCT 11 2011**

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 1,
DIVISION 22 OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTIONS 61.2200, 61.2202, AND 61.2210; AND
AMENDING CHAPTER 14, ARTICLE 2, DIVISION 6 BY
AMENDING SECTION 142.0640; ALL PERTAINING TO
PUBLIC FACILITIES FEES AND ASSESSMENTS.

WHEREAS, Ordinance No. O-19893, which provided for the deferral of Facilities Benefit Assessments (FBAs) and Development Impact Fees (DIFs) in certain circumstances and provided for a procedure to request a waiver, reduction, or adjustment in DIFs, was passed on September 11, 2011; and

WHEREAS, Ordinance No. O-19893 specifically allowed for deferral of all FBAs and DIFs until November 10, 2011, in order to address the economy's negative impact to financial markets that provide construction lending; and

WHEREAS, financial markets that provide construction lending continue to be affected by the economy and the lack of construction lending continues to stall many construction projects in the City of San Diego (City); and

WHEREAS, this ordinance will amend the San Diego Municipal Code to clarify and expand upon the City's policies and procedures with respect to FBAs and DIFs; and

WHEREAS, this ordinance will also amend the San Diego Municipal Code to set forth specific procedures by which a developer may request a waiver, reduction, or adjustment of DIFs; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 6, Article 1, Division 22 of the San Diego Municipal Code is hereby amended by amending sections 61.2200, 61.2202, 61.2210, to read as follows:

§61.2200 Purpose

- (a) through (b) [No change in text.]
- (c) The purpose of this ordinance is to implement, in part, the City's General Plan, which establishes guidelines for future urban development in the City, including the financing of public facilities.
- (d) The communities identified as Facilities Benefit Assessment Planning Areas, and Future Urbanizing Areas Planning Areas that are phase shifted, in the City's General Plan are subject to this Division, until such time as all FBA funds are collected and expended in each individual community.
- (e) The City's General Plan contains policies to maintain an effective facilities financing program to ensure the impact of new development is mitigated through appropriate fees and to address current and future public facility needs through a diverse funding and management strategy, including special assessment proceedings for local facilities. This Division is intended to establish procedures in furtherance of the City's General Plan policies by designating lands which will receive special benefits from the acquisition, construction and improvement of certain public facilities, and imposing assessments on land related to the special benefits received.

§61.2202 Definitions

The definitions set forth in this section apply to the following terms as used in this Division:

(a) through (b) [No change in text.]

(c) “Construction Permit” has the same meaning as stated in Section 113.0103;

(d) through (j) [No change in text.]

§61.2210 Payment of Facilities Benefits Assessments

(a) Payment

After the adoption by the City Council of a Resolution of Designation, the Facilities Benefit Assessment for the Area of Benefit shall be paid by the Construction Permit applicant or landowner prior to the issuance of any Construction Permit issued or required for development that would benefit from the Public Facilities Projects.

(b) Partial Payment for Phased Development

In the event that a Construction Permit applicant or landowner desires to proceed with development of a portion of the property, based on a phased development program, which is subject to a lien for the total amount of Facilities Benefit Assessments as provided in this Division, the Construction Permit applicant or landowner may obtain Construction Permits for a particular development phase after paying a partial Facilities Benefit Assessment payment in an amount proportional to the amount of development occurring under that particular development phase to the

satisfaction of the City Manager, plus the administrative processing fee, as set forth in the Comprehensive Fee Schedule on file in the Office of the City Clerk. After a partial payment is made, the City Manager will release the existing Facilities Benefit Assessment lien in accordance with Section 61.2210(d), and shall record a new Facilities Benefit Assessment lien against the property with the revised Facilities Benefit Assessment amount.

(c) Payment Amount

The amount of Facilities Benefit Assessment due shall be determined by the City Manager by the actual type and size of the development permitted by the applicable Construction Permit, and by the applicable Facilities Benefit Assessment schedule in effect and on file in the Office of the City Clerk upon the issuance of Construction Permit(s).

(d) Use of Facilities Benefit Assessments

Money received by the City as payment of the Facilities Benefit Assessments shall be deposited in an interest earning special fund established for the Area of Benefit and shall thereafter be expended solely for the purposes for which it was assessed and levied.

(e) Release of Facilities Benefit Assessment Lien

Upon payment of Facilities Benefit Assessments as provided in this Division, the City Manager will release the lien which was attached to the land pursuant to Section 61.2209.

(f) Deferral of Facilities Benefit Assessment Payment in Certain
Circumstances

Notwithstanding Section 61.2210(a), Construction Permits may be issued if the City Manager defers payment of the Facilities Benefit Assessments in accordance with this Section.

(1) Payment of Facilities Benefit Assessments may be deferred in the
following circumstances:

- (A) Where a development is located in a Facilities Benefit Assessment area that has a sufficient cash balance to fund existing programmed facilities for the next two fiscal years;
- (B) Development of affordable housing projects. For purposes of this Subsection, an affordable housing project means a project that consists entirely (with the exception of a manager's unit) of residential housing units reserved for extremely low, very-low, low, or moderate income households as defined in California Health and Safety Code Sections 50105, 50106, 50079.5 and 50093, as evidenced through a recorded agreement with the San Diego Housing Commission and/or the Redevelopment Agency of the City of San Diego; and
- (C) Until December 31, 2014, all other development that is otherwise subject to this Division.

- (2) Payment of Facilities Benefit Assessments may be deferred for a maximum period of two years from the effective date of a Fee Deferral Agreement, or until a final inspection is requested, whichever occurs earlier. A final inspection shall not occur, and where applicable no certificate of occupancy shall be issued, until the applicable Facilities Benefit Assessments are paid.
- (3) Payment of Facilities Benefit Assessments may only be deferred if the applicable administrative processing fee, as set forth in the Comprehensive Fee Schedule on file in the Office of the City Clerk, is paid by the Construction Permit applicant or landowner.
- (4) Payment of Facilities Benefits Assessments may not be deferred unless and until a Fee Deferral Agreement is entered into with the Construction Permit applicant or landowner to the satisfaction of the City Manager. The Fee Deferral Agreement shall be recorded against the applicable property in the Office of the San Diego County Recorder and shall constitute a lien for the payment of the Facilities Benefit Assessment. The Fee Deferral Agreement shall be binding upon, and the benefits of the agreement shall inure to, the parties, and all successors in interest, to the Fee Deferral Agreement.
- (5) At the end of the Facilities Benefit Assessment deferral period set forth in Section 61.2210(f)(2), the deferred Facilities Benefit Assessments due shall be determined in accordance with Section

61.2210(c), except that the Facilities Benefit Assessment shall be determined by the Facilities Benefit Assessment rate for the year in which the Facilities Benefit Assessment is actually paid as set forth in the Facilities Benefit Assessment fee schedule in effect when the Fee Deferral Agreement was executed by the City, or the Facilities Benefit Assessment fee schedule approved by the City Council for a subsequent update or amendment of the applicable public facilities financing plan, whichever is lower.

Section 2. That Chapter 14, Article 2, Division 6 of the San Diego Municipal Code is hereby amended by amending section 142.0640, to read as follows:

§142.0640 Payment of Development Impact Fees

- (a) The payment of Development Impact Fees (as defined in California Government Code Section 66000) shall be required before the issuance of any Building Permit in areas where Development Impact Fees have been established by Resolution of the City Council. The Development Impact Fee due shall be determined in accordance with the fee schedule approved by the applicable Resolution of the City Council in effect upon the issuance of a Building Permit, and may include an automatic increase consistent with Section 142.0640(b) below.
- (b) Unless otherwise specified in the applicable Resolution(s) establishing the Development Impact Fees, the amount of the Development Impact Fee shall be increased, starting on July 1, 2010, and on each July 1st thereafter, based on the one-year change (from March to March) in the Construction

Cost Index for Los Angeles as published monthly in the Engineering News-Record. Increases to Development Impact Fees consistent with the Construction Cost Index in Los Angeles shall be automatic and shall not require further action of the City Council. This Subsection shall not be applicable to Development Impact Fees in communities that are also subject to Chapter 6, Article 1, Division 22.

- (c) Notwithstanding Section 142.0640(a), Building Permits may be issued if the City Manager defers payment of the Development Impact Fees in accordance with this Subsection. Development Impact Fees due pursuant to the City's Regional Transportation Congestion Improvement Program shall not be deferred under any circumstance.
 - (1) Payment of Development Impact Fees may be deferred for a maximum period of two years from the effective date of a Fee Deferral Agreement, or until a final inspection is requested, whichever occurs earlier. A final inspection shall not occur until the applicable Development Impact Fees are paid.
 - (2) Payment of Development Impact Fees shall not be deferred unless and until a Fee Deferral Agreement is entered into to the satisfaction of the City Manager. The Fee Deferral Agreement shall be recorded against the applicable property in the Office of the San Diego County Recorder. The Fee Deferral Agreement shall be binding upon, and the benefits of the agreement shall inure, to

the parties and all successors in interest to the parties to the Fee Deferral Agreement.

- (3) Payment of Development Impact Fees shall only be deferred if the applicable administrative processing fee, as set forth in the Comprehensive Fee Schedule on file in the Office of the City Clerk, is paid by the applicant or landowner.
- (4) At the end of the Development Impact Fee deferral period as set forth in Section 142.0640(c)(1), the deferred Development Impact Fees due shall be determined in accordance with Section 142.0640(a), except that the Development Impact Fee shall be determined by the Development Impact Fee rate for the year in which the Development Impact Fee is actually paid as set forth in the Development Impact Fee schedule in effect when the Fee Deferral Agreement was executed by the City, plus an automatic increase consistent with Section 142.0640(b), or the fee schedule approved by the City Council for a subsequent update or amendment of the applicable public facilities financing plan, whichever fee schedule is lower.
- (d) Any party on whom Development Impact Fees are imposed, may file an application for a waiver, adjustment, or reduction of the Development Impact Fees with the City Manager in accordance with this Subsection. Nothing in this Subsection shall affect the requirements set forth in Section 142.0640(a). The procedures provided in this Subsection are

additional to any other procedure authorized by law for protesting or challenging Development Impact Fees.

- (1) An application for a waiver, adjustment, or reduction of Development Impact Fees shall set forth the factual and legal basis to support the application for a waiver, adjustment, or reduction of Development Impact Fees.
- (2) An application for a waiver, adjustment, or reduction of Development Impact Fees shall only be processed after the applicable fee or amount of deposit, as set forth in the Comprehensive Fee Schedule on file in the Office of the City Clerk, has been paid in full. If a deposit is required, and the deposit as shown in the Comprehensive Fee Schedule is insufficient to cover the actual cost to the City to process the application, an additional deposit, in an amount determined by the City Manager, shall be required. Any unused portion of a deposit shall be returned. If the City Council grants the application for a waiver of the Development Impact Fees, then the fee or the amount of the deposit expended shall be returned, minus a processing fee equal to 10 percent of the refund amount up to a maximum of five hundred dollars. If the City Council grants the application for an adjustment or reduction of the Development Impact Fees, then a portion of the fee or amount of the deposit expended, determined by the percentage reduction in the Development Impact Fee imposed,

shall be returned, minus a processing fee equal to 10 percent of the refund amount up to a maximum of five hundred dollars.

- (3) An application for a waiver, adjustment, or reduction of Development Impact Fees shall be filed no later than ten (10) calendar days after the Development Impact Fees are imposed or ten (10) calendar days after the Development Impact Fees are paid, whichever occurs earlier.
- (4) The decision on an application for a waiver, adjustment, or reduction of Development Impact Fees shall be decided by the City Council within sixty (60) calendar days of the date that the application is received by the City Manager. The *applicant* shall bear the burden of presenting evidence to support the application for a waiver, adjustment, or reduction of Development Impact Fees.
- (5) Notice of the time and place of the City Council hearing, including a general explanation of the matter to be considered shall be mailed at least 14 days prior to the hearing to the *applicant*, and any interested party who files a written request with the City Manager requesting mailed notice of all applications for a Development Impact Fee waiver, adjustment, or reduction. Written requests for such notice shall be valid for one year from the date on which it is filed unless a renewal request is filed prior to the end of the one-year term. If established by resolution of the City Council,

an annual charge for sending notices based on the estimated cost of providing the service, shall be required prior to the requestor's name being placed on a notice list.

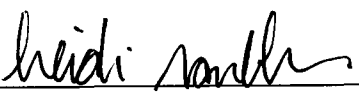
- (6) An application for a waiver, adjustment, or reduction of Development Impact Fees may only be granted if:
- (A) The City Council makes the following *finding*: there is no reasonable relationship between the amount of the Development Impact Fee and the cost of the public facilities attributable to the *development* on which the fee is imposed.
- (B) The landowner enters into an agreement with the City providing that an intensification of use of the *development* shall subject the *applicant* or landowner to full payment of the Development Impact Fee to the satisfaction of the City Manager. The agreement shall be recorded with the Office of the San Diego County Recorder and shall constitute a lien against the applicable property for the payment of the Development Impact Fee. The agreement shall be binding upon, and the benefits of the agreement shall inure, to the parties and all successors in interest to the parties to the agreement.
- (7) If an application for a waiver, adjustment, or reduction of Development Impact Fees is granted, any Development Impact

Fees previously paid with respect to the application at issue shall be refunded in accordance with the resolution adopted by the City Council granting the application, plus any interest earned by the City on the fee, as applicable.

Section 3. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

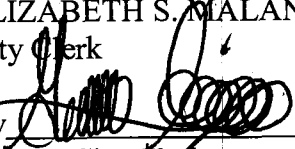
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Heidi K. Vonblum
Deputy City Attorney

HKV:hm
09/13/11
Or.Dept: Facilities Financing

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of OCT 04 2011.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 10-11-11
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor